

RIBBLE VALLEY BOROUGH COUNCIL

REPORT TO ACCOUNTS AND AUDIT COMMITTEE

meeting date: WEDNESDAY, 17 NOVEMBER 2021
title: SECTION 106 AGREEMENTS
submitted by: DIRECTOR OF ECONOMIC DEVELOPMENT AND PLANNING
principal author: NICOLA HOPKINS – DIRECTOR OF ECONOMIC DEVELOPMENT & PLANNING

1. PURPOSE

1.1 To update Members on Section 106 Agreements and planning obligations secured as part of planning applications.

1.2 Relevance to the Council's ambitions and priorities:

- Community Ambitions:
 - To sustain a strong and prosperous Ribble Valley.
 - To help make people's lives safer and healthier.
 - To protect and enhance the existing environmental quality of our area.
- Corporate Objectives:
 - To be an environmentally sustainable area, prepared for the future.

2. BACKGROUND

2.1 Planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended), commonly known as S106 agreements, are a mechanism which make a development proposal acceptable in planning terms, that would not otherwise be acceptable. They are focused on site specific mitigation of the impact of development.

2.2 Planning Obligations are usually contained in a s106 Agreement, an agreement entered into by both the person giving the obligations and the council(s). But there is a thing called a Unilateral Undertaking – where just the person giving the obligations executes it. This is the favoured approach of Planning Inspectors when developments are considered at appeal.

2.3 In accordance with the Community Infrastructure Levy Regulations planning obligations must only be sought where they meet all the following tests:

- a) necessary to make the development acceptable in planning terms;
- b) directly related to the development; and
- c) fairly and reasonably related in scale and kind to the development.

2.4 In April 2010 the Community Infrastructure Levy (CIL) was introduced through the Community Infrastructure Levy Regulations 2010. CIL is a planning charge, introduced by the Planning Act 2008, as a tool for local authorities in England and Wales to help deliver infrastructure to support the development of their area. The levy only applies in areas where a local authority has consulted on, and approved, a charging schedule which sets out its levy rates and has published the schedule on its website. Most new development which creates net additional floor space of 100 square metres or more, or creates a new dwelling, is potentially liable for the levy.

- 2.5 To date Ribble Valley Borough Council have chosen not to adopt a CIL levy with planning obligations continued to be negotiated and secured via Section 106 Agreements. At the time CIL was introduced it was evident that planning obligations would continue to play an important role in making individual developments acceptable and affordable housing continues to be delivered through planning obligations rather than the levy.
- 2.6 Within the Ribble Valley planning obligations are secured mainly in respect of major housing developments typically for the following infrastructure:
- 2.6.1 Affordable Housing (including over 55s accommodation)
 - 2.6.2 Public Open Space and Recreation
 - 2.6.3 Longridge Loop (developments within Longridge)
 - 2.6.4 Biodiversity
- 2.7 As a two-tier authority Lancashire County Council are also party to our legal agreements where planning obligations in respect of education and highways (sustainable travel etc) are required to make the development acceptable in planning terms.

3. TRIGGER POINTS

- 3.1 Obligations contained within a S106 Agreement become enforceable when the development commences, and an obligation becomes a land charge. Although most obligations are subject to conditions which include the timings of commuted sum payments, the trigger point.
- 3.2 Examples of recent planning obligations include:
- 3.2.1 The Owner covenants with the Council as follows:
 - 3.2.1.1 To pay the Off-Site Leisure Contribution to the Council in full prior to the first occupation of the 7th (Seventh) Dwelling.
 - 3.2.1.2 Not to occupy or permit the Occupation of more than 6 (six) Dwellings until the Off-Site Leisure Contribution has been paid to the Council in full
 - 3.2.2 The Owner hereby covenants with the County Council as follows:
 - 3.2.2.1 To pay 50% of the Primary Education Contribution to the County Council prior to the occupation of the 7th Dwelling.
 - 3.2.2.2 Not to occupy or permit the Occupation of more than 6 Dwellings until 50% of the Primary Education Contribution been paid to the County Council.
 - 3.2.2.3 To pay remaining 50% of the Primary Education Contribution to the County Council prior to the occupation of the 14th Dwelling.
 - 3.2.2.4 Not to occupy or permit the Occupation of more than 13 Dwellings unless and until the remaining 50% of the Primary Education Contribution has been paid to the County Council
- 3.3 The Council's preference is to deliver affordable housing on site to create mixed communities. Whilst there have been developments which have secured off-site

affordable housing contributions most of the development's secure on-site delivery. The delivery of this housing is secured within the legal agreement with a requirement for an Affordable Housing Scheme to be submitted to the Council prior to the commencement of the development and the agreement details of the type and size of affordable housing required on the site. Similar clauses are secured in respect of the delivery of over-55s accommodation on site.

4. MONITORING

4.1 The obligations contained within Section 106 Agreement are monitored continually by the following mechanisms:

4.1.1 Regular meetings of relevant officers.

4.1.2 Housing completion monitoring.

4.1.3 Publication of the Infrastructure Funding Statement.

4.2 Prior to the pandemic officers from Planning, Legal, Housing, Finance and Leisure Services met every 2 months to monitor receipted Section 106 contributions, review expected contributions and plan for the use of future expected contributions. These meetings have now been reinstated following all staff returning to the office.

4.3 The Council's Planning Policy section continually monitor housing completions within the Borough which enables the trigger points, which are associated with housing completions/ occupation, within S106 Agreements to be monitored, with the assistance of Council Tax when necessary. If the developer does not pay the commuted sum when the trigger point is reached this continual monitoring enables the Council's Finance section to invoice for payments at the appropriate time.

4.4 Additionally in 2019 the Community Infrastructure Levy (Amendment) (England) (No.2) Regulations 2019 were amended and require LPAs to publish an Infrastructure Funding Statement (IFS) annually. All LPAs must publish an annual report covering both CIL and S106 obligations regarding the monies secured, received, held and spent, as well as provision of certain on-site infrastructure, such as affordable housing.

4.5 Ribble Valley Council published its first IFS earlier this year for the financial year 2019/20 (1st April 2019 to 31st March 2020). This is available to view on our web-site:

https://www.ribblevalley.gov.uk/info/200294/planning_and_buildings/1772/infrastructure_funding_statement

4.6 In accordance with the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 the Council applies a charge to cover the cost of monitoring planning obligations. The fees are as follows:

Type of Obligation	Monitoring Fee	Payment terms
Commuted sum	1% of each payment instalment	To be included on the invoice for the payment
On-site provision (i.e affordable housing)	£1,000 per development site/ parcel	On occupation of the first dwelling

5. USE OF PLANNING OBLIGATIONS

- 5.1 As set out within paragraph 2.2 any planning obligation secured as part of a planning consent needs to be directly related to the development. In this regard Section 106 Agreements set out where off-site contributions will be utilised.
- 5.2 Examples of recently secured obligations include:
- 5.2.1 “Off Site leisure Contribution” means the sum of £9,586.98 (None Thousand Five Hundred and Eighty-Six Pounds and Ninety-Eight Pence) to be paid to the council and used towards off site leisure facilities in Clitheroe.
- 5.2.2 “Primary Education Contribution” means the sum of £83,749.80 adjusted by Education Indexation, to be paid to the County Council in accordance with the terms of this Deed for the provision of additional primary school places at Clitheroe Brookside Primary School and/ or St Michael and St John’s Roman Catholic Primary School Clitheroe or any subsequent name or designation by which they are known;
- 5.3 In respect of the contributions paid to Ribble Valley Borough Council (such as off-site leisure and biodiversity) the relevant officer is consulted at the time the legal agreement is being drafted to ensure that the contribution is utilised close to the development in accordance with the relevant CIL tests. The S106 Agreement will set out where the contribution will be utilised, similar to the examples above, which will be within the Borough.
- 5.4 As Members are aware Lancashire County Council are both the highway and education authority and as such any obligations in respect of such infrastructure is paid directly to the County Council. The County Council are party to S106 Agreements which involve such obligations and their legal team draft the clauses relevant to LCC. LCC are responsible for utilising the contribution following receipt in accordance with the requirements of the legal agreement.
- 5.5 The provision of education can be challenging given that pupils can travel in and out of Boroughs to access education. The education contribution sought from developers is used to mitigate the direct impact of the development and not to address any existing shortfall. The Education Authority use 5-year pupil projections to ascertain whether the impact of a development will result in a shortfall of places in Lancashire primary schools within 2 miles and/or Lancashire secondary schools within 3 miles of the development. In instances where the development is close to the boundary of the borough this may result in schools outside the Borough being assessed. However, officers of Ribble Valley Council are aware that this is the case and that the priority is to utilise contributions secured from our developments at schools within the Valley. This position has been communicated with LCC.
- 5.6 Members may be aware that a legal agreement, which was secured at appeal at Higher Road in Longridge, cited a secondary school outside the borough in respect of utilisation of the contribution. The wording of the agreement was agreed at Planning appeal stage and this position was not communicated with the Borough Council. The legal agreement in that instance was a Unilateral Undertaking which neither Council are party to in respect of signatures. This issue has been raised as a concern with LCC and it has been emphasised that contributions receipted from developments within the Valley should be used in the Valley.

6. REPORTING

- 6.1 Utilisation of receipted S106 contributions is reported to the relevant service committee with authority sought to either utilise the contribution or to give the contribution to a third party to accord with the requirements of the S106 Agreement.
- 6.2 For S106 contributions which are proposed utilised on Council owned leisure facilities this is reported to Community Committee (eg: <https://democracy.ribblevalley.gov.uk/documents/s1782/Play%20Areas%2024%20Aug%2021.pdf>).
- 6.3 For contributions which are identified to be used on play areas/ space which are not the Council's responsibility or the delivery of Longridge Loop the relevant Town/ Parish Council/ sports organisation contacts the Planning Authority setting out how they would like to utilise the contribution. If the proposed use accords with the requirements of the Agreement authority is sought from Planning and Development Committee to give them the money following completion of the works (eg: <https://democracy.ribblevalley.gov.uk/documents/s1610/Longridge%20Cricket%20Club%20290721.pdf>).
- 6.4 In respect of any off-site affordable housing contributions authority is sought from Health and Housing Committee to utilise the contributions following the provision of additional affordable units (eg: https://www.ribblevalley.gov.uk/download/meetings/id/7183/agenda_item_7_-_purchase_of_property_in_longridge).

7. COMMUNITY INFRASTRUCTURE LEVY

- 7.1 As Members are aware Ribble Valley choose not to implement a Community Infrastructure Levy (CIL) when it was introduced in 2010 choosing to continue negotiating planning obligations via Section 106. Affordable housing cannot be delivered through CIL and as such there was always going to be a need for S106 Agreements even if CIL had been adopted. Since its introduction the CIL Regulations were amended seven times within the space of nine years with the current regulations being the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019. These amendments sought to address the perceived problems with CIL
- 7.2 At the time the latest CIL regulations were published 164 out of the 343 local authorities across England had adopted charging schedules.
- 7.3 Notwithstanding the changes which have occurred to the Regulations over the past decade in August 2020 the Government's White Paper, on its proposed changes to the planning system, was released which proposes to change the way that infrastructure and affordable housing are delivered, as follows:
- 7.3.1 Replacing of the Community Infrastructure Levy (CIL) and the use of section 106 agreements by an all-encompassing Infrastructure Levy (IL).
- 7.3.2 Use of payments raised through IL for the provision of affordable housing, rather than section 106 agreements.
- 7.4 The reforms would have resulted in a mandatory nationally set value-based flat rate charge, termed the Infrastructure Levy, which would also encompass affordable housing. It would no longer be possible to use Section 106 Agreements.

- 7.5 The suggested changes were designed principally to reduce time spent on negotiating S106 agreements and inefficiencies in capturing land value uplift. However, it was not clear how the new levy would work in practice and serious concerns that it would lead to a reduction of the delivery of affordable housing nationally.
- 7.6 In July the former housing secretary Robert Jenrick confirmed that the levy would be set locally, giving local councils more control as well as the ability to determine how and where any levies are spent within their local area. However, following the appointment of the new Housing Secretary, Michael Gove, it has been reported that the Planning Bill is being completely rethought and it is understood any reforms will be delayed.
- 7.7 As such at this stage it is unclear whether the recommendations in the White Paper will be taken forward and in what form. Planning obligations from new developments within the Borough will continue to be negotiated at S106 agreements.

A handwritten signature in blue ink, appearing to read 'N. Hopkins', with a horizontal line extending to the right.

NICOLA HOPKINS
DIRECTOR OF ECONOMIC DEVELOPMENT AND PLANNING